Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))))	MB Docket No. 05-311

COMMENTS OF CAVALIER TELEPHONE, LLC AND CAVALIER IP TV, LLC

Cavalier Telephone, LLC and Cavalier IPTV, LLC (separately or together, "Cavalier") by their attorneys, respectfully submit the following comments in response to the November 18, 2005 Notice of Proposed Rulemaking adopted by the Federal Communications Commission ("the Commission") in this docket.[1]

1. The Current Local Franchising Authority Rules Hinder The Deployment of Video Service Competition

Consumers stand to gain considerably from competition in the video market. Competition, however, must be fostered, and restrictive rules that inhibit entry of new providers must be revised. An entrenched cable TV incumbent provider dominates the wireline cable TV market, and outdated Local Franchising Authority ("LFA") laws and regulations that help sustain that regime must be revised. ***The existing local franchising authority process serves as a barrier to entry by slowing entry into a market, as well as setting unreasonable and unwieldy terms and conditions.*** It is time for change.

[1] FCC Notice of Proposed Rulemaking, MB Docket No. 05-311, adopted November 3, 2005, released November 18, 2005.

2. Developing Technologies that Promote Innovation and Lower Consumers Prices Should be Deployable Under Streamlined Regulations

Cavalier is a competitive local exchange carrier ("CLEC") headquartered in Richmond, Virginia, providing local, long distance, and broadband services to over 207,000 residential and 173,000 commercial telephone lines stretching from Virginia to southern New Jersey. The company is adding 15,000 new residential telephone customers a month, it has grown into a profitable CLEC with $290 million in annual revenues. As a facilities-based CLEC, Cavalier has made significant capital investments in its communications network, and stands on the brink of offering its "triple play" product to customers.

Cavalier is poised to roll out its IPTV video product in a matter of weeks, which will deliver in excess of 150 channels of all-digital television programming, high-speed Internet broadband, and telephone service for less than $100 a month to consumers: far less — around $50 a month less —than what some local cable companies are now charging. Cavalier is delivering its triple play over ***existing copper phone lines*** that are DSL-capable; loops that are leased in large part from the incumbent local exchange carrier. Cavalier, while dependent on the ILEC for the last-mile connection to the customer, has spent considerable sums of its own money to upgrade its own telecommunications network facilities to carry IPTV, as well as to establish our master and regional video headends.

It is important to note that, while Cavalier may use facilities that are located in public rights of way, Cavalier is not digging up any street or byway to provision video service — instead, the company is using existing rights of way and facilities. The IPTV service will be delivered over existing copper networks, making further use of facilities that have been described as "legacy" and "worthless." It is therefore of critical importance that access to copper loop facilities be ensured by this Commission in order to encourage and support both telephone, Internet, and, now, video competition.

Furthermore, because Cavalier's service runs over existing telephony infrastructure, Cavalier is able to quickly serve approximately 2 million potential customers in our major markets. Those customers, because they are served via traditional copper plant, tend to be in older, and inner-city, neighborhoods, rather than in newer or suburban neighborhoods — in other words, Cavalier's IPTV is, as a function of the history of the network's design, incapable of violating redline statutes.

Additionally, Cavalier's IPTV technology is readily deployable, and can easily be adapted to small-town and rural communities. We are currently developing our "IPTV in a box" product, and are in discussions with small, rural telephone companies and local governments with municipal fiber networks, to integrate our video service into their networks, effectively providing a triple-play product to a small carrier without requiring that provider to construct an expensive head-end facility. We foresee tremendous economies of scale, and, ultimately, the provision of digital television to previously unserved communities.

Because of the fact that Cavalier's provisioning of video service is "low impact" to localities, and because Cavalier is using an Internet Protocol-enabled technology, we believe that we are not offering "cable services" over a "cable network" as contemplated by the Federal Cable Act, and are therefore not subject to Title VI. Furthermore, while we understand and support a locality's need to manage and police its rights of way, we believe that the traditional video franchise is a poor fit for a competitor like Cavalier.

Many of the traditional elements of a video franchise — lengthy negotiation intervals, must-serve or build-out requirements, franchise fees, onerous customer service standards, excessive Public, Educational and Governmental ("PEG") channel carriage, and cash and in-kind contributions to enlarge local government coffers — are not supported by a market-driven economic model, particularly where the new entrant is not digging up the public rights of way. Furthermore, regulatory and legislative decisions that only account for the big players in telecommunications and cable — and that fail to make room for smaller providers who are leaders at innovating with new technology — do a disservice to consumers and deny them the benefits of true innovation and competition.

3. Local Franchise Authority Requirements Are A Barrier to Entry

Any negotiation that delays entry by a new competitor by more than 30 days serves as a barrier to entry. Cavalier's IPTV product can be turned up in a locality very quickly, due to its use of existing infrastructure. Once Cavalier is able to serve customers in a locality, it is critical that we begin winning those customers immediately. Lengthy franchise negotiations in no way help bring competition in a timely, and cost effective, manner.

4. Build Out Requirements Should Not Be Imposed Upon Competitors

Cavalier's provisioning of IPTV utilizes the existing copper-based telecommunications infrastructure. IPTV, delivered by MPEG-4 technology and copper distribution, is distance limited by ADSL-2 technology. Therefore, franchises that are designed to mirror those held by the incumbent cable company do not reflect the new competitive landscape, and may burden a new provider with terms and conditions that are unrealistic. For example, in Cavalier's case, it is entirely unreasonable to require that it become capable of providing cable service to all households in a franchise area — again, because of the technology that is being using to provide the IPTV service, we can only serve customers within ADSL-2 distance of a central office. In fact, requiring a distance-limited provider like Cavalier to build-out its "video network" (which is, in reality, its DSL network), would require Cavalier to dig up the public rights of way, install duplicative facilities, and create the very harm that the unbundled loop was created to avoid.

Further, from a consumer point of view, a new video competitor does not need to serve (or potentially serve) every cable consumer in a locality in order to bring the benefits of competition to a locality. Although Cavalier will not be able to physically reach every cable customer in our footprint, its competitive price will serve to lower prices for all customers in a locality (unless, of course, incumbent cable operators are able to set different prices for customers based on whether or not a particular customer is actually capable of being served by a new triple-play provider within a locality, i.e., price discrimination).

5. **Franchise Fees Can Still Be Recovered**

While the imposition of a franchise fee upon a provider using the existing infrastructure may be questionable, Cavalier does not propose to usurp the imposition and the collection of current fees. We agree that the franchise fee is some measure of economic recompense for digging up the public right of way, and creates an economic incentive to treat with care that which is held in the public trust. Again, companies like Cavalier are not digging up the public rights of way to provision its video product, and thus do not cause the ill that cable franchise fees seek to ameliorate.

6. Customer Service Standards Should be Sustained

While Cavalier expects its video offering to be of the highest quality, and expects that its customer service will meet and exceed that currently provided by incumbent cable companies, a competitive market is best suited to dictate service standards. Onerous, and economically unreasonable, service requirements imposed by localities must give way to competitive pressures. Cavalier is cognizant, however, that customer service standards are a manifest demonstration of a government's concern for its citizens, and that it is appropriate to set standards that serve as a floor below which service must not fall. While we believe that the market will demand an even better level of customer service than is now provided by incumbent cable companies, we are prepared to comply with the reasonable mandates imposed by governments.

7. Government Channels Should Be Sustained

Again, Cavalier believes that consumer-demand in an open a competitive video market can best establish the number of PEG channels that should be carried by a video provider. Cavalier recognizes that PEG channels can serve an important public interest, and that governments and citizens can be well-served by the flow of information carried on PEG channels — nevertheless, such a public benefit cannot serve as a blank check for a locality to overreach and demand excessive PEG channels, or to require video providers to produce content for those channels.

Cavalier supports realistic requirements for the carriage of PEG channels, and encourage this Commission, or local governments, to assist new entrants in securing access to those PEG channels that the incumbent cable company so closely holds and controls. Competing video providers should set their competitive differences aside in order to support the important public good afforded by the efficient and reasonable carriage of PEG channels.

8. Additional LFA Fees Are Unwarranted

Local franchising authorities ("LFA") have extracted, and have sought to extract, additional fees, payments, and other stipends from cable companies seeking to enter local markets. While an incumbent cable company was assured of enough market share to recover those gold-plated investment decisions necessary to mollify an LFA (e.g., excessive support for the production and carriage of PEG channels, burdensome INET subsidies, outrageous franchise filing fees, exorbitant cash pay-outs to LFAs to "offset" any "costs" not covered by franchise filling fees, etc.) for entry into a local market, new competitors, who are competing for every customer and not assured of any level of market share, cannot afford to do so. A competitive economic model cannot support such largess borne on the backs of providers or their customers.

CONCLUSION

Internet Protocol technology allows a company like Cavalier to offer a competitive video product today. And, because technology is moving so quickly, this Commission must re-establish the ground rules for entry into the video market by adopting a light-touch form of uniform regulation that will allow new, unforeseen technologies to flourish. National leadership is critical to overcoming provincial thinking, and to encourage a national investment that will bring competition and service to previously un- or under-served areas. Cavalier, which has always been a competitor and never a monopoly, is ready to take on its next competitive challenge, and ready to bring the benefits of competition to the video market.

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Respectfully submitted,

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